



**TRUCK
MANUFACTURERS
ASSOCIATION®**

124756

NHTSA-01-8677-8

1225 New York Avenue, NW – Suite 300
Washington, DC 20005-6156
Phone: 202/638-7825 • Fax: 202/737-3742

250 Bridge Street – Suite 100
Carleton Place, ON K7C 3P4
Phone: 613/253-8858 • Fax: 613/253-8859

March 21, 2001

Mr. Stephen R. Kratzke
Associate Administrator for
Safety Performance Standards
National Highway Traffic Safety Administration
400 Seventh Street, SW
Washington, DC 20590

Dear Mr. Kratzke:

REFERENCE: Standards Enforcement and Defect Investigation; Defect and Noncompliance Reports; Record Retention [Docket No. NHTSA 2001-8677; Notice 1], Advance Notice of Proposed Rulemaking

The Truck Manufacturers Association (TMA), whose members include all of the major North American manufacturers of medium and heavy-duty trucks (greater than 8845 kilograms (19,500 pounds) gross vehicle weight rating) submits the following comments in response to the subject Advance Notice of Proposed Rulemaking. TMA member companies include: **Ford Motor Company, Freightliner LLC, General Motors Corporation, International Truck and Engine Corporation, Isuzu Motors America, Inc., Mack Trucks, Inc., PACCAR Inc, and Volvo Trucks North America, Inc.**

The following comments represent the general consensus of TMA members.

The TREAD Act seeks to ensure that NHTSA receives appropriate data in a timely fashion, including that related to foreign recall actions and internal company data on claims and lawsuits related to defects.

A high priority goal of truck manufacturers is to promote safety in all aspects of their products. TMA believes that the intent of the TREAD rulemaking is to identify what key information should be reported to NHTSA to ensure that there is an effective early warning of a potential safety defect.

We believe that the current reporting system has worked reasonably well. Thus, any potential changes should overlay the current system and be directed toward enhancing the current system and eliminating any shortcomings. The purpose of any new reporting requirements should be to bring safety considerations to light at the earliest possible time. The quality, timing and format of

DEPT. OF TRANSPORTATION
DOCKETS
01 MAR 21 PM 2:36

the information, not the quantity, would seem to be the appropriate focus of any new reporting requirement.

TMA supports the agency's indication that it would be appropriate to take an incremental approach, i.e., limit the critical vehicle systems to be reported initially and expand the reporting, if necessary, at a later date. **In the case of medium and heavy-duty trucks, we agree with NHTSA's suggestion in the preamble of the ANPRM that the categories would be restraint systems, fuel tanks and axle/suspension/brake components.** TMA members do not have independent data on tires. If the early warning reporting rule is not sharply focused and properly managed, the weight of the reporting burdens on the medium and heavy-duty truck manufacturing industry, and attendant burdens on NHTSA to collect, review and analyze industry data, will assuredly overwhelm all concerned. Starting slow would well serve the public interest and the Congressional mandate to "not impose requirements unduly burdensome ... taking into account the manufacturer's costs of complying with such requirements and [NHTSA's] ability to use the information in a meaningful manner to assist in identification of defects related to motor vehicle safety."

Specific recommendations are included with each of the major discussion topics in the remainder of this submittal as to the character of the data to be provided and the suggested reporting frequency. We believe that such data will supplement the current system and provide the agency with the information it needs to identify, in a timely fashion, those areas where the agency may need to heighten attention and focus on a suspected problem area.

TMA believes that equipment suppliers should submit information to NHTSA and the truck manufacturers at the same time.

IDENTICAL/"SUBSTANTIALLY SIMILAR" - MEDIUM AND HEAVY DUTY TRUCKS ARE SIGNIFICANTLY DIFFERENT THAN LIGHT VEHICLES

Medium and heavy-duty truck manufacturers are concerned about the lack of clarity with regard to the definition of "substantially similar." Medium and heavy-duty trucks are highly customized vehicles, and rarely will there be a large group of vehicles that are substantially similar in every way.

Medium and heavy-duty truck manufacturers produce highly customized products designed to satisfy the cargo-carrying demands and operating environments of the trucking industry, the purchasers of our products. Truck buyers can specify nearly every major component on the vehicle. Medium and heavy-duty truck manufacturers are assemblers and systems integrators, i.e., they "manufacture" a vehicle by assembling the components/systems specified by the end user. Because of the custom nature of the truck manufacturing business, the same model with the same major components (engine, transmission, axles) could still be configured such that it is not "identical" in terms of wheelbase, frame size and option content. Therefore, in general, the only identical vehicles would be those in a given order for a specific fleet built at a certain time.

Likewise, trucks manufactured for use in other countries are designed to meet different customer needs, operating conditions, and safety regulations, therefore, they generally would not be “substantially similar” to vehicles sold for the North American market. For this reason, **medium and heavy-duty truck manufacturers would not expect to be reporting any foreign recalls other than those involving components “substantially similar” to those in the U.S.**

When medium and/or heavy-duty truck recalls or campaigns are required, vehicles that share identical component parts are “substantially similar.” While it would not be appropriate to define medium and heavy-duty trucks as “substantially similar,” one could define a restraint system, fuel tank or axle/suspension/brake system installation as “substantially similar.” Therefore, in the case of medium and heavy-duty trucks, “substantially similar,” of necessity, needs to be defined around major component systems of the vehicle not the vehicle make/model itself.

CLAIMS/LAWSUITS

The medium and heavy-duty truck manufacturing industry maintains data on claims and lawsuits, including subrogation claims, personal injury claims and property damage claims. Claims data may be a good indicator of a possible area to investigate, but only if the claim is accompanied by an allegation of a reasonably specific product defect. A claim, by itself, may not be a good indicator that a safety issue exists.

The experience of TMA members is that claim demand letters and litigation alleging that a death or serious injury was caused by a defect in its product are often received one or more years after the alleged incidents have occurred. This hardly provides the kind of “early warning” information which NHTSA wants. Also, many of the personal injury claims are not amenable to categorization by component. For example, truck manufacturers often receive personal injury claims that relate to falls from the vehicle cab or impaired visibility without further information relating to specific components.

Nonetheless, medium and heavy-duty truck manufacturers are prepared to report receipt of **ALL** such claims/lawsuits since the agency has indicated a priority interest in death and serious injury incident and allegation reports. **Specifically, we would propose to provide, on a quarterly basis, in electronic format, the number of written claims (subrogation, personal injury and property damage)/lawsuits in which a defect has been alleged to have caused a death, personal injury or property damage.**

The medium and heavy-duty truck industry considers an injury to be serious if it can be expected that the individual will not fully recover. Thus, the injury has an element of permanency before it can be fairly categorized as serious. Rarely do truck manufacturers receive a complaint/lawsuit that fails to allege a serious injury (even though in many cases after discovery proceeds, the claim of permanent injury is dropped). Medium and heavy-duty truck manufacturers believe that it would be difficult to require employees to subjectively determine whether an alleged injury is serious or not, therefore, we would propose to report **all** such personal injury claims/lawsuits

Medium and heavy-duty truck manufacturers believe that it is inappropriate to provide any additional information at the early warning stage because of concern about the agency's ability to keep "raw data" and related, unconfirmed information out of the public record. Disclosures of this kind of material could severely and unjustifiably harm a manufacturer and its reputation with the public without any benefit to public safety.

Even when a lawsuit is filed, truck manufacturers rarely have enough information in the pleadings to determine the specific allegation of defect or the injuries alleged. Many of the cases are subrogation suits filed by insurance companies who have little personal understanding of the underlying facts of the case. Increasingly, states have created form complaints that allow *pro se* litigants to check off boxes and fill out a few lines of information to generate a complaint. In addition, the pleading requirements in federal court and in most state courts are minimal, and lawsuits serve merely to put a defendant on notice of the general nature of the claim. As a result of these practices, manufacturers often do not determine the specific defect that the plaintiff is alleging until it deposes plaintiff's expert. Generally, the plaintiff's expert is not deposed until the latter part of the discovery period, which on average is two to three years after the lawsuit has been initiated. Also, it is common for plaintiff's theories to change as evidence is gathered in the case.

While the abbreviated injury scale (AIS) code may be used by other agencies, it is not universally used in claims information that truck manufacturers receive. An ancillary concern that truck manufacturers have with establishing a regulatory definition of "serious injury" based on AIS criteria is that it may be disruptive to the existing hazard communication system generally used in the medium and heavy-duty truck manufacturing industry.

Truck manufacturers generally utilize a system of hazard communication that is premised on the probability and gravity of the harm a particular risk poses. Manufacturers use the term "caution" in its hazard communications to convey that the risk posed by an activity may damage the vehicle. The term "warning" is used to convey the fact that the risk presented by the situation is serious personal injury, and the term "danger" conveys that death could result from the activity. Truck manufacturers are concerned that by mandating a definition of serious personal injury that is inconsistent with the approach taken by the trucking industry, the agency will force manufacturers to integrate this new definition into its existing system of warnings. Doing so could render the trucking industry warnings misleading.

Additionally, the AIS-3 criteria may not be an appropriate indicator of serious injury. The AIS approach places emphasis on the location of the injury as opposed to the gravity of the injury. This may cause an over or under-reporting of injuries worthy or unworthy of the label "serious."

FIELD REPORTS

The term "field reports," while familiar to NHTSA, has a variety of meanings within the medium and heavy-duty truck industry. TMA recommends that within the context of this rulemaking, the

term should refer to those field analyses conducted by the technical personnel of the member companies that relate to reports of a safety defect. **Medium and heavy truck manufacturers would propose to provide the agency, on a quarterly basis, the number of field reports for the following component system categories: restraints, fuel tanks and axle/suspension/brakes. We would recommend that the reports be limited to trucks built during the five years prior to the quarterly report date, to ensure that only relevant information to current issues is included.**

FIRES, FUEL LEAKS, ROLLOVERS

TMA believes that these issues will be adequately addressed in the claims and lawsuit reports. We are concerned that if these areas are covered separately that there would be double counting, i.e., information reported under claims/lawsuits and the same information reported under this section. Any duplication of information could be inadvertently misleading.

PROPRIETARY AND CONFIDENTIAL BUSINESS INFORMATION

TMA member companies strongly oppose access into their internal websites and any reporting requirements related to: warranty data, internal investigations, running production changes or service part changes, manufacturing plant quality reports and “individualized” customer satisfaction campaigns.

WEBSITE ACCESS

TMA member companies strongly oppose access into their internal websites because much of the information contained therein is highly proprietary, such that the compromise of such information by the agency or placement in public dockets could have catastrophic competitive consequences.

WARRANTY CLAIM DATA

TMA believes that warranty data is not a good early warning indicator of possible safety issues. Warranty data are not used by medium and heavy-duty truck manufacturers to initially identify defects, but searched to determine the magnitude or history of an identified problem. A company usually identifies safety issues long before there is any indication in the warranty system, therefore, such information does not serve any early warning purpose. In addition, most warranty data claims include claims for replacement of parts/components whose failure is unrelated to vehicle safety, e.g., seats replaced for torn upholstery versus a structural failure.

Truck manufacturers have systems of collecting warranty information on their products through their dealer network and selected large customers authorized to do their own warranty work. When a truck owner requires warranty repair, the owner generally takes the truck to one of the manufacturer’s authorized dealers for the repair. When a warranty repair is conducted, the dealer conducting the repair enters the warranty data on its computer, and the information is transmitted

to the manufacturer's warranty database and stored. All of the warranty data in truck manufacturers' warranty databases have been entered by dealership or direct warranty customer authorized personnel.

Warranty databases are not a reliable source to extrapolate statistical trends for safety defects for several reasons. As set forth above, the warranty information most often is generated by the dealership service departments. Consequently the quality, reliability, accuracy and consistency of the information suffers and information is often vague. Warranty can get improperly coded by the dealership, and is not always submitted in a timely fashion. Some "warranty" is actually "policy" or "customer goodwill" paid through the warranty system and may be the result of improper service or lack of maintenance, but is paid to appease a good customer. For medium and heavy-duty trucks, build date, not model year, is coded into the warranty system. Another confounding factor is that the costs associated with reviewing the claims submitted are often too high to justify conducting an inquiry about the accuracy in claim reporting. As a result, many of the claims are never reviewed for accuracy or validity.

In addition, in the case of medium and heavy-duty trucks, warranty records can include dealer or fleet repairs that can grossly overstate the number of actual failures in certain situations. Large fleets typically buy substantial numbers of trucks with nearly identical specifications. In some circumstances, a fleet owner will experience a failure of a part in a small number of vehicles. As a result, the fleet owner asks the truck manufacturer to conduct a campaign on all of the trucks in his fleet, including those that did not demonstrate the failure. If the truck manufacturer agrees to conduct the campaign, its warranty records will show that warranty work, related to the part at issue, was conducted on the total number of vehicles in the fleet, when in fact, there may have been only a few trucks serviced that contained the defective part. Truck manufacturers generally do not have the search capability to redact or separate these fleet campaign records from the warranty database.

In cases where warranted parts are returned to a manufacturer, coding errors have been observed. Also, a significant percentage of returned parts when evaluated are determined to be fully operative and free of defects.

STANDARD WARRANTY CODES

The medium and heavy-duty truck manufacturing industry does not have standardized warranty codes. Since warranty codes are specific to an individual company, comparisons across the industry will be difficult, if not impossible.

INTERNAL INVESTIGATIONS

Internal reviews are undertaken by medium and heavy-duty truck manufacturers for a variety of reasons (such as process improvement, cost reductions, etc.), including safety concerns. If such an investigation reveals a safety defect in a product, the company has a statutory obligation to

report the matter to NHTSA and campaign the defective product. Therefore, it is TMA's opinion that information used to generate most safety investigations in this industry is already being provided to the agency. Further, TMA believes that this information should only be provided in specific cases where either an OEM's own investigation determines a safety defect exists, or where NHTSA opens an investigation. The time associated with additional reporting requirements would detract from the energy that should be focused on the internal review. Finally it is one more piece of information that NHTSA would have to catalog and it might be information where the conclusion is that there is no defect.

The agency's suggestion that it might want, at some stage of this process, to be a party to the internal review and pre-decisional actions raises grave concern that this could constitute an unwarranted invasion into proprietary and confidential business information.

TMA believes that a requirement to report internal investigations also raises serious privilege and public policy issues. Internal investigations are often conducted in anticipation of litigation. As such, they are generally protected from disclosure by the attorney work product doctrine and may also be subject to attorney-client privilege. If the agency incorporates an "internal investigation" component in its early reports rule, the requirements would be in conflict with the long held principles of common and statutory law.

CHANGES TO COMPONENTS AND SERVICE PARTS

Because of the custom nature of the medium and heavy-duty truck business, truck manufacturers and their multiple suppliers continually make changes to their products for various reasons. Any given manufacturer will have literally thousands of product change requests every year, the majority of which have no relevance to safety. Simply because a part changes does not mean that a defect existed in the earlier version. Changes are made for many purposes, such as to reduce cost, to reflect a change in supplier, to increase service life, cosmetic improvements, adding new functionality or technology that was not there before and/or merely to change an instruction to conform to the way parts are actually being produced.

When a part number change occurs a design change notice or engineering release is issued. Such documents are intended to inform the organization what changes are being made to a particular component. They comprise a broad spectrum of parts alterations, and most often have little or no impact on safety or performance issues. These notices are the culmination of product development efforts and often contain proprietary information. The risk of allowing a competitor to have access to these materials presents a substantial threat to the viability of a manufacturer to compete in the industry.

TMA believes strongly that a requirement to report running changes or a change to a service part is inappropriate. The resultant data would be of little early warning benefit to the agency and not aid in identifying potential safety defects and the disclosure of proprietary information would be devastating. Since the vast majority of running changes are procedural and/or cosmetic, this

potential data category carries an effective return quotient that is inversely proportional to the sizeable burdens which manufacturers would have to shoulder in collecting and submitting such data.

Any changes made to address a company's good faith determination that a safety defect exists, would be reported to NHTSA under the existing requirements of 49 CFR part 573. Further, service part change data has in the past been reported to NHTSA by many manufacturers under the agency's §573.8 regulation. Certainly this is required for parts changes which involve "product improvement" and other communications to more than one customer, "regarding any defect ... failure or malfunction ... or any flaw or unintended deviation from design specifications" in the changed part. TMA believes, accordingly, that NHTSA is already getting - or has the current means to obtain - the service part information it needs for early warning detection of potential safety defects.

MANUFACTURING PLANT QUALITY REPORTS

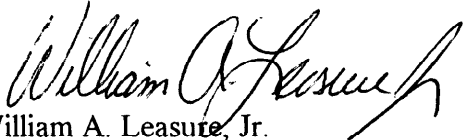
Quality reports relate to all aspects of manufacturing operations, from raw material intake, sorting and storage of inventory, to machining and processing, vision systems, inspection, packaging, etc. Throughout the industry, engineers or groups of engineers with expertise in highly specialized areas of vehicle components make these product performance judgments on thousands of parts and deviations. Monitoring this process and any resulting reports would require a substantial number of industry and NHTSA engineers to evaluate even a portion of this extensive activity without any benefit to public safety.

CUSTOMER SATISFACTION CAMPAIGNS

Within the medium and heavy-duty truck manufacturing industry, customer satisfaction campaigns can be either broad based, i.e., affect all vehicles, or individualized instances for specific customers (in the case of medium and heavy-duty trucks, owner-operators or fleets) carried out on a "good will" basis. TMA believes that customer satisfaction campaigns of the individualized type fall outside of the realm of the TREAD Act, and the regulation promulgated by NHTSA should not require reporting these items unless they involve a defect.

We appreciate the agency's careful consideration of these comments and your understanding of the uniqueness of the medium and heavy-duty truck manufacturing industry. TMA staff are available to provide any additional relevant information that the agency may require.

Sincerely,



William A. Leasure, Jr.
Executive Director